

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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BOBBY ANTONIO CLAYTON,

Plaintiff,

v.

JEFF SCHWANZ,

Defendant.  
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OPINION AND ORDER

20-cv-148-bbc

Pro se plaintiff Bobby Antonio Clayton is proceeding on claims that defendant Officer Jeff Schwanz used excessive force against him while plaintiff was incarcerated at the Monroe County jail. Now before the court is defendant's motion to dismiss this case for plaintiff's failure to prosecute it. Dkt. #36. I will grant the motion to dismiss, and will order plaintiff to pay \$192.50 in costs to defendant.

Plaintiff has not communicated with the court or defendant since he participated in the pretrial conference on August 18, 2020. Since that time, defendant filed a motion for summary judgment for plaintiff's failure to exhaust his administrative remedies, dkt. #27, to which plaintiff did not respond. Defendant then filed a motion to compel, dkt. #31, because plaintiff had failed to respond to defendant's discovery requests. Plaintiff did not respond to the motion to compel or to defendant's discovery requests by his deadlines for doing so. On January 11, 2021, defendant notified plaintiff that his deposition was scheduled for February 2, 2021. Plaintiff did not respond to the notice or appear for his deposition. Plaintiff also did not respond to defendant's motion to dismiss this case. The

court has no current address for plaintiff and has been unable to contact him.

The court warned plaintiff previously that it might dismiss his case if he failed to provide the court and defendant his current address. Dkt. #8 at 6. Plaintiff has failed to provide the court or defendant a current address, failed to respond to discovery requests, failed to respond to multiple motions filed by defendant, and failed to appear for his deposition. For all of these reasons, I will dismiss this case under Rule 41(b) of the Federal Rules of Civil Procedure with prejudice, for plaintiff's failure to prosecute it.

Defendant also asks for costs he incurred as a consequence for plaintiff's failure to appear for his deposition. Under Rule 37(d)(3) of the Federal Rules of Civil Procedure, a party who fails to appear at his deposition must pay reasonable expenses incurred by the failure. Defendant says that he incurred \$192.50 in unnecessary court reporter fees, and \$1,760 in attorney fees in connection with filing the motion to dismiss. I will order plaintiff to pay the \$192.50 in court reporter fees because those costs were caused directly by plaintiff's failure to appear at his deposition, but I will not require plaintiff to pay attorney fees that defendant incurred in drafting the motion to dismiss. Those attorney fees were not a direct result of plaintiff's missing his deposition, and I conclude that dismissal with prejudice is a sufficient sanction.

#### ORDER

IT IS ORDERED that

1. Defendant Jeff Schwanz's motion to dismiss, dkt. #36, is GRANTED. This case

is DISMISSED WITH PREJUDICE for plaintiff Bobby Clayton's failure to prosecute it.

2. Defendant's motion to compel, dkt. #31, is DENIED as moot.
3. Plaintiff must pay \$192.50 to defendant by March 30, 2021.
4. The clerk of court is directed to enter judgment accordingly and close this case.

Entered this 23d day of February, 2021.

BY THE COURT:

/s/

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BARBARA B. CRABB  
District Judge